STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: Application of Docket No. SB 2015-06
Invenergy Thermal Development LLC's
Proposal for Clear River Energy Center

RHODE ISLAND PROGRESSIVE DEMOCRATS OF AMERICA'S RESPONSE TO INVENERGY'S MOTION OF OPPOSITION

INTRODUCTION

Now comes, Rhode Island Progressive Democrats of America ("RIPDA") and hereby responds to the Objection to the Motion For Intervention ("Objection") by Invenergy Thermal Development LLC ("Invenergy").

A. BACKGROUND

Pursuant to the Energy Facilities Siting Act, Chapter 42-98 of the General Laws of Rhode Island, as amended ("Act"), and the Rules of Practice and Procedure ("Rules") of the Rhode Island Energy Facilities Siting Board ("Board"), RIPDA filed a motion on December 22, 2015 for intervention pursuant to Rule 1.10 to intervene on Invenergy's proposal for a combined cycle electric generating facility ("Plant" or "Project") on Wallum Lake Road in Burrillville, Rhode Island. On December 28th, Invenergy filed an objection to RIPDA's motion for intervention.

B. LEGAL STANDARD FOR INTERVENTION

Absent the Rules, the legal standard for intervention in front of this Board is not well established. Under Rule 1.10(b), "any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Board." Such a right or interest may be: (1) a right conferred by statute; (2) an interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Board's action in the proceeding; or, (3) any other interest of such nature that petitioner's participation may be in the public interest.

In similar situated administrative bodies like this Board, such as the Public Utilities Commission has a rule nearly identical to this Board's 1.10 rule,[1] the Rhode Island Supreme Court when interpreting the Public Utilities Commission nearly identical rule to this Board stated that the rule is "*liberally drawn* in order to ensure that the interests of interested parties are met through the adversarial process." *In re Island Hi-Speed Ferry,* 746 A.2d at 1245 (emphasis added). In this particular case, the Public Utilities Commission allowed the Town of New Shoreham and Interstate Navigation to intervene in the High Speed Ferry proceeding before the Public Utilities Commission. *In re Island Hi-Speed Ferry,* 746 A.2d at 1246. Even though the Public Utilities Commission questioned the motives of the Town of New Shoreham and Interstate Navigation, which the Public Utilities Commission found to be "self-serving and of questionable value,"[2] the Court found that the Commission allowing the Town and Interstate to enter the proceeding was *neither unlawful nor unreasonable*, even though the intervention may have been overly burdensome to Hi-Speed. *Id*. (emphasis added).

While this Board normally has not had many parties intervene under Rule 10(b)(3),[3] a similarly situated board like the Public Utilities Commission has had multiple parties intervene under its similarly situated rules. For example, under Public Utilities Commission Docket No. 4111, the Conservation Law Foundation, a nonprofit, along with multiple parties, intervened in the Docket without objection. However, after the proceedings a suit was filed to review the Public Utilities Commission. In *In re Town of New Shoreham Project* ,19 A.3d 1226 (R.I. 2011),

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[1] Public Utilities Commission: Procedural Rule 1.13 states in part:

> (b) Who may Intervene. Subject to the provisions of these rules, any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Commission. Such right or interest may be: (1) A right conferred by statute. (2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Commission's action in the proceeding. (The following may have such an interest: consumers served by the applicant, defendant, or respondent; holders of securities of the applicant, defendant, or respondent.) (3) Any other interest of such nature that movant's participation may be in the public interest.

[2] Hi-Speed was placed by having to defend *against its competitor.* In re Island Hi-Speed Ferry, LLC, 746 A.2d at 1246 (Emphasis added)

[3] ISO New England, a non profit, intervened in SB 2012-01.

the Rhode Island Supreme Court held that RIGL § 39-5-1[4] confers standing only upon aggrieved person by a decision or order of the commission. *id* at 1228. In particular, " a person is so aggrieved by a judgment or order when such judgment or order results in injury in fact, economic or otherwise." *id*. And an organization satisfies the requirement of standing when [the organization's] members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit. *Id.* Furthermore, the Rhode Island Supreme Court added that:

> [M]ere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' and the party seeking relief [must have] alleged such a personal stake in the outcome of the controversy as to ensure concrete adverseness that sharpens the presentation of the issues upon which the court depends for an illumination of the questions presented. In re Town of New Shoreham Project, 19 A.3d at 1227

While the organization CLF was denied review of the Public Utilities Commission order, the Court did acknowledge that CLF's had significant interest in issues of climate change and recognizes the strong public interest in this offshore wind project. *id*.

In short, the rules on who may intervene are liberally drawn to permit parties as full parties, even if their interest are to be found of "self-serving and of questionable value."

C. RESPONSE TO OBJECTION BY INVENERGY

RIPDA respectfully reiterates their motion for intervention. RIPDA's participation will serve the public interest under Rule 1.10(b). While RIPDA has not participated before this Board or the Public Utilities board, RIPDA has participated before the administrative bodies and legislative bodies. RIPDA participation has been in the public interest, such as the enforcement of state regulations in other proceedings. RIPDA's membership also includes several specialists that are relevant to this matter, including but not limited to Geology, Cybersecurity, Law, and Sociology, that would be beneficial to this proceeding. Currently, RIPDA has a multitude of members that live and work throughout Rhode Island, including Burrillville. In this particular issue, RIPDA's membership base has done a variety of methods from testifying in front of town

[4] RIGL § 39-5-1 allows a party to review the Public Utilities Commissions or this Board's order or decision.

council's in order to get them to intervene in the matter before the Board, to dissecting, researching and analyzing the 400+ page application before this Board.

RIPDA has a direct and specialized interest because RIPDA's members' interests in the proceeding before this Board, would not only be directly affected by Invenergy, but it would impact RIPDA's national chapter, Progressive Democrats of America ("PDA") and its members. RIPDA not only expects its members to be impacted by electricity rate markets, but also by other factors such as safety and climate change. Thus, RIPDA asserts that it would be "directly affected by the Project." Additionally, even if RIPDA's interests were considered that of a general matter, the rules are "liberally drawn in order to ensure that the interests of interested parties are met through the adversarial process." *In re Island Hi-Speed Ferry*, 746 A.2d at 1245.

Moreover, Invenergy's contention that the "interest related to carbon emissions and the state's overall energy policy will be more than adequately represented by other Parties, including the Conservation Law Foundation ("CLF")" defeats the purpose of having an "adversarial process" if the applicant's gets to decide its adversaries. *In re Island Hi-Speed Ferry*, 746 A.2d at 1245. Furthermore, CLF, a party that filed a motion to intervene and whom Invenergy approves of, stated:

> By intervening in the pending Energy Facility Siting Board (EFSB) docket, CLF will present multiple arguments as to why Invenergy should be denied a permit to build an expensive, long-lived, carbon-emitting fossil-fuel power plant. A proposal such as this which makes little economic or environmental sense has unsurprisingly garnered opposition from a large number of stakeholders, each with unique interests and perspectives. Thus, any assertion that CLF's participation in the docket is a reason for excluding other intervenors in the process is as misguided as the proposal itself.[5]

Additionally,RIPDA's motion for intervention should not be denied on the grounds that it does not have standing to appeal the final order of the board. Invenergy contends that *In re Town of New Shoreham Project* stands as an example of why RIPDA should be denied a motion for Intervention. 19 A.3d 1226 (R.I. 2011). In *In re Town of New Shoreham Project*, the Rhode Island Supreme Court only held that CLF did not have standing to challenge the order of the Public Utilities Commission, 19 A.3d at 1228, and did not state that CLF or similar organizations could not participate in future actions before the Public Utilities Commission or any other board.

[5] http://www.rifuture.org/invenergy-intervenors.html

Furthermore, RIPDA is not a competitor of Invenergy but it bases its motion on public interest and thus the Board's decision should not be based on Public Utilities Commission, In Re: Island hi Speed Form of Regulation and Review of Rates PUC Docket 3495 (Order 17452 issued May 9,2003)[6] as Invenergy has cited as an example. In this particular circumstance, the Public Utilities Commission decided whether two parties could intervene in their docket. In that particular docket the issue was bifurcated into two issues: (1) the form of regulation appropriate to IHSF; and, (2) the cost of service and to determine the reasonableness of the current rates. *Id.* Both parties were part of the original docket, PUC No. 2802. at 13, Interstate, a party seeking to intervene, stated their public interest motion was based on their revenue erosion.[7] Subsequently, the Public Utilities Commission denied Interstate's motion because the the docket was only about the appropriate form of regulation for IHSF and the review of the reasonableness, of IHFS rates, holding that if Interstate itself wanted to review its form of regulation or rates it could file its own case. In fact, the Commission reached a conclusion that "the movants lacked standing to represent any interest but their own respective interests." *Id. at 12*. Here, RIPDA, is a statewide chapter of a national organization and is in front of the Board, not as a competitor of Invenergy, but as a public interest organization whose interests participation is in the public's interest.

D. CONCLUSION

RIPDA exists in part to help ensure governmental activities remain transparent and are debated in the public domain, for the betterment of all parties involved. Invenergy's desire to block RIPDA's involvement should concern both this Board and the general public, as it suggests Invenergy wishes to limit discourse on this topic and stack the deck in its favor. If Invenergy's proposal truly has merit, then Invenergy should concentrate on highlighting such while addressing the concerns raised, rather than attempting to silence those raising concerns. For the reasons set forth herein, RIPDA hereby restates its request that the Board grants RIPDA's Motion for Intervention.

[6] http://www.ripuc.org/eventsactions/orders/IHSF3495Ord17452(5.9.03).pdf

[7] "Interstate alleged that IHSF intends to control the summer tourist passenger ferry market and that "if IHSF is successful, the loss of passengers could reduce Interstate to an expensive freight service in the summer and an expensive winter lifeline service."

Respectfully submitted,
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CERTIFICATION OF SERVICE

I certify that the original and nine copies (total of 10) of this Motion was filed with the Energy Facility Siting Board. In addition, a PDF version of this Motion was served electronically on the service list of this Docket, as that list was provided by the EFSV on December 24, 2015. I certify that all of the foregoing was done on January 6, 2015.

Andrew Aleman, Esq.